

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

DOLAN CONTRACTORS, INC.

Employer

and

Case 4–RC–20333

SOUTH JERSEY REGIONAL COUNCIL
OF CARPENTERS, LOCAL 1489 and
METROPOLITAN DISTRICT COUNCIL OF
CARPENTERS, a/w UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA¹

Joint Petitioners

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The names of the Joint Petitioners appear as amended at the hearing.

² At the hearing, the Employer sought to introduce as a witness Rob Naughton, the Director of Organizing for the Metropolitan Regional Council of Carpenters (herein MRC). The Employer's counsel stated that the witness' testimony would demonstrate that the MRC does not have jurisdiction over the petitioned-for employees and therefore could not represent them. The Hearing Officer did not permit Naughton to testify, but referred the objection to the Regional Director for ruling. The issue raised by the Employer is an internal union matter, which is not relevant to the issues involved in these proceedings. Accordingly, the Hearing Officer's ruling is sustained.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is a general construction company specializing in the construction of steel and concrete “box” style industrial buildings, particularly warehouses and manufacturing facilities. The Joint Petitioners seek to represent a unit of the Employer’s full-time and regular part-time carpenters and certified carpenter apprentices.³ The Employer takes the position that the unit should include all of its field construction employees, and that Jim Townsend and Dean Rossi should be excluded as supervisors.⁴

Michael Dolan and Rob Risnychok are the Employer’s Executive Vice-President and Project Manager, respectively. The Employer has approximately 27 full-time field construction employees including carpenters, laborers, equipment operators and cement masons. The Employer performs one or two jobs at a time, generally in southern New Jersey. The Employer performs most of its work using its own employees rather than subcontractors. Most jobs require the Employer to design the building and site; clear, excavate and shape the site using heavy equipment; install utility systems; lay out the building location; construct a foundation; install underground plumbing; pour a concrete floor slab; erect walls; and construct a roof deck. The Employer generally uses the “tilt wall” method of wall construction whereby a wall panel form is built with wood and rebar at the building site and positioned near its designated location. The form is then poured with concrete, erected on the foundation, and tilted upward by a crane. The wall panels weigh from 60,000 to 135,000 pounds. The Employer constructs the exterior curbs and concrete pavement and performs some of the landscaping,⁵ interior construction, or “fit up” work,⁶ which includes such tasks as constructing metal stud partition and wall frames, and installing sheet rock or drywall, drop ceilings and doors and cabinets.

Field construction employees are paid between \$12 and \$34.50 per hour. All field employees, including carpenters, receive an annual bonus determined by Dolan. For most employees, recent bonuses have ranged from \$500 to \$1000. All field employees are covered by the same holiday and vacation policy. They all work essentially the same schedule, take work breaks at the same time, use the same parking lot, attend company social functions, and have

³ The parties agree that office employees, shop mechanics, landscaping employees, guards and supervisors as defined in the Act should be excluded from the unit.

⁴ At the hearing, the Joint Petitioners contended that Lawrence Nicoletto should be excluded from the unit because he does not regularly perform the duties of a carpenter. In its brief, the Joint Petitioners also asserted that Nicoletto is a statutory supervisor. The Employer contended at the hearing that Nicoletto was a supervisor but did not address this issue in its brief. Based on the parties’ common position concerning Nicoletto, he shall be excluded from the unit.

The Joint Petitioners are unwilling to proceed to an election in a unit of all field construction employees but would consider proceeding to an election in a narrower unit.

⁵ The Employer generally subcontracts the asphalt work.

⁶ The Employer also subcontracts fit up work as needed.

access to the company exercise room. They all complete time sheets in which they categorize their work time according to a daily activity code. On their time sheets, the six individuals in the petitioned-for unit list themselves as “Carpenters,” and other employees list themselves differently, including in such classifications as “Masons” or “Operators.”

In 1985, the Employer signed a short-form collective-bargaining agreement with the New Jersey State Council of Carpenters (herein called the New Jersey Council). The South Jersey Regional Council (herein called the South Jersey Council) is affiliated with the New Jersey Council, and Carpenters Local 1489 is a member local of the South Jersey Council. In 1994, the Employer signed a short-form agreement with the Metropolitan District Council of Carpenters of Philadelphia (herein called the MDC).⁷ Both agreements were Section 8(f) pre-hire agreements that bound the Employer to the terms and conditions of employment established by affiliated local unions and/or councils and their counterpart contractor associations. Both short-form agreements contained “evergreen” clauses pursuant to which the Employer was bound to successor collective-bargaining agreements until one party notified the other of its intent to terminate the agreement. The New Jersey Council has had collective-bargaining agreements with the Building Contractors Association of New Jersey/Drywall and Interior Systems Contractors Association of New Jersey (herein called the BCA). These agreements incorporated the wages, benefits and working conditions established by the affiliated regional councils, including the South Jersey Council. The bargaining unit in the current agreement includes, “all journeyman carpenters, millwrights and lathers and all of their apprentices, trainees and foremen . . . who perform work within the trade-line jurisdiction of the United Brotherhood of Carpenters and Joiners of America” Similarly, the MDC has had bargaining agreements with the Interior Finish Contractors Association of the Delaware Valley (herein called IFCA). The bargaining unit in the current IFCA agreement includes “foremen, journeymen carpenters, and apprentices.” Pursuant to the short-form agreements, the Employer paid its union-represented carpenters the prescribed journeyman wage rates in the applicable collective bargaining agreements, checked off dues for union-represented employees, and made contributions on behalf of carpenters to applicable union health and welfare, pension and other fringe benefit funds.

The Employer repudiated its collective-bargaining relationship with the MDC effective at the expiration date of the last contract on April 30, 2001 and repudiated its agreement with the South Jersey Council by letter in 2000 or 2001. Despite its repudiation of these agreements, the Employer continues to pay its carpenters the wages and make benefit fund contributions⁸ established under the successor collective-bargaining agreements and to check off the carpenters’ dues and remit them to the appropriate local or council.

The Employer has also had a collective-bargaining relationship with the Cement Masons Union, although it does not have one at present. However, as with its carpenters, the Employer continues to make contributions and remit dues to the Cement Masons Union benefit funds on behalf of its cement masons.⁹ The record does not show whether the Employer pays those

⁷ The Metropolitan District Council subsequently became the Metropolitan Regional Council.

⁸ The benefit fund contributions include health and welfare, pension, annuity and apprenticeship training.

⁹ The Employer makes contributions to this fund for J.R. Mazur, William Carson, David Critchlow, Richard Cieslinski and Doug Motell.

employees the wages established in the Cement Masons collective-bargaining agreements. Over the years the Employer has obtained workers referred by the Ironworkers, Drywall and Tapers, Operating Engineers and Laborers unions, among others. The Employer's personnel manual indicates that employees are classified by the Employer as "union" or "non-union" and that union employees are not eligible to receive the Employer's benefit package¹⁰ and should "look to their union" for their benefits. The Employer also employs some non-union employees from Texas and/or Mexico who work for a few months at a time and then return home. The Employer provides those employees with a vehicle, residential hotel lodging and a \$280 stipend per employee per week for living expenses.

The Joint Petitioners contend that six of the Employer's employees are carpenters who should be included in the petitioned-for unit: Jim Townsend, Dean Rossi, John Fritsch, Kelvin Jolley, Clayton Poinsett and Robert Zippel. Townsend, Rossi, Fritsch, Jolley, and Zippel have all worked for the Employer for at least eight years and are members of either the MRC or Local 1489.¹¹ All five of them are designated as "journeymen" and paid as such under the applicable Carpenters collective-bargaining agreements. Townsend, Rossi, Fritsch, and Zippel have all completed a Carpenters apprenticeship program leading to journeyman certification.¹² All of the employees sought by the Joint Petitioners, other than Poinsett, testified at the hearing and they all stated that they spend 75 to 90 per cent of their work performing carpentry work. They listed the following tasks as carpentry work: layout and survey work, form work, taping, spackling, caulking, installing ceilings, doors and cabinets, constructing tilt walls, and fit up work, including studs, sheet rock, and drywall. The trade jurisdiction provisions in the Carpenters' collective-bargaining agreements, however, are quite broad and also include clean up of the work area, grade work, footings, scaffolding, and welding and burning incidental to carpentry, all of which the carpenters have performed for the Employer. The remainder of their time is spent performing non-carpentry tasks, such as unloading trucks, setting and tying rebar, shoveling, raking and grading concrete, digging holes and trenches for footings, running loaders, backhoes, forklifts and other equipment, and laying ground pipe.

The record shows that all construction employees work together in a coordinated effort to complete certain jobs, and many employees have performed a variety of carpentry and non-carpentry tasks. In this regard, Dolan testified that there are certain tasks that do not require much skill and that virtually all field employees may perform these tasks interchangeably. These tasks include raking concrete, grading, utility work, steel erection, and building forms for floor slabs and tilt walls. The employees also work together to construct the tilt walls. At other times, employees work as a group on such work as installing storm pipe, sewers, and water systems.¹³

¹⁰ The benefits described in the manual include holidays, vacation, health insurance, dental/vision insurance and a 401(k)/profit sharing plan.

¹¹ Poinsett did not testify at the hearing, and there was no other evidence in the record as to his length of service with the Employer.

¹² The record does not contain any evidence with respect to whether Jolley and Poinsett also completed an apprenticeship program, but as members and journeyman of Local 1489, it appears that, like the other Local 1489 journeyman (Zippel and Rossi), they did.

¹³ Fritsch and Poinsett are certified welders. Several other employees also perform welding work. Welding is a subject taught in the carpenter apprentice school, and the Carpenters claim it in their jurisdiction.

Some of the Employer's employees who are not trained carpenters have performed work within the usual trade jurisdiction of Carpenters, including building form work. Specifically, Anthony Kenny¹⁴ has done tape and spackle work, utility employee Mike Dixon has built forms for tilt wall panels, some of the laborers have removed forms from concrete, and employees who are primarily cement masons have assisted in form work and footings. However, the record does not detail how often or how much time is expended by any of the non-carpenter employees in performing carpentry work.

Union Organizer Kurt Pechmann testified that various trades routinely work together on union construction sites for other employers. Equipment operators, for example, must coordinate their work with laborers, carpenters and cement masons. Significantly, Dolan testified that, notwithstanding the repudiation of its collective bargaining agreements, the Employer operates in essentially the same way using the same work techniques, methods and processes as when it had collective-bargaining relationships with the Carpenters Union.

Dolan testified that Townsend supervises the overall project as a "superintendent," and Dean Rossi serves as superintendent when Townsend is unavailable. Rossi is also in charge of the tilt wall construction crew, which includes about six to 12 employees from different trades.¹⁵ Townsend is generally in charge of the other five carpenters and some laborers. At times, Lawrence Nicoletto,¹⁶ Townsend and Rossi jointly decide who will be assigned to a given crew. Within any particular crew, tasks are assigned by Nicoletto, Townsend or Rossi. A crew may also have a leadman to ensure that the work is done efficiently.

The Employer takes the position that a unit limited to carpenters is inappropriate, asserting that its work processes are so functionally integrated, and the degree of task interchange among carpenters and other field employees is so extensive, that all field employees have a shared community of interest and therefore must be included in the same unit. The Employer further argues that it does not recognize craft distinctions among its employees and that it freely assigns them to work tasks irrespective of the employee's union membership or primary skill.

In making unit determinations the Board weighs a variety of factors, including differences in employee interests and working conditions, wages and/or other compensation; different hours of work and benefits; separate supervision; degree of dissimilar qualifications, training and skills; differences in job functions; frequency of contact with other employees; work situs of the various classifications; degree of integration or interchange of work between classifications and the history of bargaining; and whether they are part of an integrated operation. *Overnite Transportation Company*, 322 NLRB 723, 724 (1996); *Esco Corp.*, 298 NLRB 837, 839 (1990); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). In making these determinations, the Board first considers the union's petition and whether that unit is appropriate. *P.J. Dick Contracting*, 290 NLRB 150 (1988). The petitioner is not compelled to seek any

¹⁴ The record is unclear as to Kenny's primary responsibilities. Witnesses referred to him at different times as a lead laborer, laborer foreman and a cement mason.

¹⁵ The record does not show the function or composition of any other crew.

¹⁶ The record does not show Nicoletto's job title, but as indicated above, both parties agree that he is a supervisor.

particular appropriate unit. The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964). A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless "an appropriate unit compatible with that requested unit does not exist." *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963); accord *Ballentine Packing Co.*, 132 NLRB 923, 925 (1961). See also *Overnite Transportation Company*, supra. If the Board finds that the unit sought by the petitioner is an appropriate unit, its inquiry ends. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). Accordingly, while a comprehensive unit of all field construction employees may be an appropriate unit, it is only necessary to decide whether the petitioned-for unit of carpenters is an appropriate one for collective bargaining under the Act. *R.B. Butler, Inc.*, 160 NLRB 1595, 1599 (1966).

The Board has long held that units in the construction industry may be appropriate on the basis of either a craft unit or departmental unit, or so long as the requested employees are a clearly identifiable and homogeneous group with a community of interest separate and apart from other employees. *Brown & Root Braun*, 310 NLRB 632, 635 (1993); *Dick Kelchner Excavating Co.*, 236 NLRB 1414 (1978); *R.B. Butler Inc.*, supra at 1598-1599 (1966) and cases cited therein. The fact that employees may perform duties outside of their classification does not render their inclusion in the unit inappropriate when these duties are secondary in nature. *Dick Kelchner Excavating Co.*, supra, at 1415; *W.P. Butler Company*, 214 NLRB 1039 (1974).

The record shows that the Employer's carpenters constitute a distinct and homogeneous craft unit. Thus, they have worked for many years under Carpenters' collective-bargaining agreements, they continue to be compensated pursuant to these agreements, they completed Carpenters' apprenticeship programs, and at least 75 to 90 percent of their work is within the carpentry trade. Moreover, by virtue of their distinct compensation package, particularly their attachment to the Union pension funds, the carpenters have common interests that are distinct from other employees. Although the carpenters work closely at times with other employees, their community of interest remains sufficiently separate. In this regard, the Board has held that employees who exercise craft skills may constitute a separate appropriate unit even though they work in conjunction with other employees under common supervision. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994); *Haberman Construction Company*, 236 NLRB 79, 82 (1978); enf. denied on other grounds, 641 F.2d 351 (5th Cir. 1981). See also *CCI Construction Co.*, 326 NLRB 1319 (1998). While the Carpenters perform some non-carpentry work, and other employees perform some carpentry work, the record does not support the Employer's contention that all of its field employees are essentially interchangeable. Rather, the record demonstrates that the carpenters spend the vast majority of their time performing carpentry work and other employees only occasionally perform work that may be classified as carpentry. In *Burns & Roe Services Corp.*, supra, at 1309, the Board stated:

The Board has found that a strict separation between crafts is not required in order to find a separate craft unit appropriate. Integration of operations requiring some crossover between craft and noncraft employees, or between employees of different crafts, is permissible.

The record shows that the Employer operates its work crews in the same manner that it did before repudiating its Section 8(f) agreements with the Carpenters' councils. Moreover, the Employer seeks referrals from different construction unions for various types of employees, thus suggesting that it recognizes that there are distinct skills among the trades, contrary to the Employer's stated position that it views all its employees as essentially multi-skilled and interchangeable. It is also significant that the Employer has an extensive bargaining history treating the carpenters as a separate unit. See *Stockton Roofing Co.*, 304 NLRB 699, 700 fn. 7 (1991). Cf. *Dezcon, Inc.*, 295 NLRB 109 (1989). Thus, although there is some contact, common supervision and overlap of job functions between carpenters and other employees, as well as some common personnel policies, these factors do not blur the lines of separate craft identity so as to preclude a separate carpenters' unit. Accordingly, I find that the petitioned-for unit of carpenters is appropriate.¹⁷ *CCI Construction Co., Inc.*, supra; *Burns & Roe Services Corp.*, supra.

Jim Townsend has worked for the Employer since 1986. He reports to Project Manager Rob Risnychok, a salaried employee. There is no written job title or job description for Townsend's position, but he considers himself a "working foreman," and he is paid the foreman wage rate under the collective bargaining agreement.¹⁸ The Employer, however, considers him to be a "superintendent," and on several occasions Townsend has been introduced to contractors with this title.¹⁹ He has recorded some of his work hours as "supervision" on his time sheets. He currently earns \$31.05 per hour, while the other carpenters receive \$29.30, with the exception of Fritsch, who is paid \$27.00.²⁰ Townsend received a bonus of \$5000 in 2000, significantly higher than that of most other employees because of his additional responsibilities. He has the use of a company vehicle, but so do at least five undisputedly nonsupervisory employees. He spends about 90 percent of his workday engaged directly in carpentry work using carpentry tools.

Townsend assigns tasks to employees on a daily basis and directs five carpenters and an unspecified number of laborers in their work. He generally assigns the laborers to perform clean-up work, and at times he asks equipment operators to dig footings. He sometimes consults with Risnychok or Nicolletto as to work assignments, but the record does not specify in what circumstances he does so. Much of the work he assigns and directs is repetitious and dictated by

¹⁷ The Employer relies largely on *Longcrier Co.*, 277 NLRB 570 (1995), in arguing that the unit should include all construction employees, but that case is distinguishable. There, the Board recognized the well-established precedent of finding appropriate units in the construction industry based on craft delineations, but found that the equipment operators at issue did not constitute a craft unit or a functionally distinct group of employees. In this regard, the Board emphasized that the equipment operators did not participate in a traditional apprenticeship program or obtain journeyman status in a craft. Moreover, several of the employees at issue spent at least 40 per cent of their time performing duties other than operating equipment, and there was no cited evidence that their compensation was based on union collective-bargaining agreements. In all of these respects, the equipment operators had less craft identification than do the carpenters at issue in the instant case.

¹⁸ Neither the New Jersey Council or MRC collective-bargaining agreements for carpenters have a superintendent classification.

¹⁹ On one occasion several years ago, at a job site a few years ago, a makeshift sign referred to him as "the superintendent."

²⁰ Townsend and Fritsch are apparently paid according to the MDC's agreement.

the site and building drawings provided by architects and engineers. The Employer constructs most of its structures in essentially the same way at each job, and the employees accordingly perform the same tasks on a regular basis. The experienced carpenters who report to Townsend know what to do when they are assigned tasks and require little instruction. Townsend also monitors and coordinates the work of employees employed by the Employer's subcontractors who are working at the site and ensures that their work is done competently and according to specification. Townsend and Risnychok attend job meetings with contractors to coordinate the progress of the work. He may make recommendations concerning job sequencing or assignments to Risnychok at these meetings, but there is no evidence that his recommendations are routinely followed.

Townsend has never discharged an employee.²¹ The only evidence with respect to Townsend's involvement in such actions concerned an incident from approximately three years ago. Townsend told Risnychok that he was dissatisfied with two of the carpenters referred by a local union and had replaced them with two other carpenters referred by the local. However, Townsend consulted with Dolan before taking that action. There is no evidence that Townsend has ever disciplined an employee. On one occasion, Townsend had an altercation with a subordinate, but no discipline resulted. Townsend sometimes contacts an outside drywall taper to work for the Employer when the need arises. However, for the past two to three years, based on the Employer's preference, Townsend has regularly contacted the same taper, Mike Bosco, and Townsend testified that he has checked with Risnychok before calling Bosco.²² On a recent job, Townsend suggested that the Employer use temporary employees to assist in clean up operations, and Risnychok so authorized the use of temporary employees for one week. Thereafter, Risnychok discovered that the temporary employees stayed into the second week and he questioned Townsend about it, but he was satisfied with Townsend's response and made no further issue of it. Townsend has also contacted union hiring halls at times and asked them to refer employees.²³

Risnychok testified that Townsend has the authority to transfer employees between sites without checking with higher management, but that he usually checks with Risnychok and they discuss the matter before making a decision. The record does not show how often Townsend is involved in such transfers. The only evidence as to Townsend's involvement in determining employee pay increases is Dolan's testimony that that Townsend once "gave his [Townsend's] son a raise." The record, however, does not disclose the amount of the increase, the surrounding circumstances, how and when it occurred, or what involvement Dolan had in the process. Townsend verifies the time sheets of construction employees in his crew to ensure that the hours and activity categorizations are accurate. He possesses and has exercised the authority to permit employees in his crew to leave work early. At times he informs the Project Manager of these early departures. Townsend has no authority to grant or deny vacation requests, a responsibility handled by Dolan. Dolan testified that Townsend has authority to authorize overtime work but did not provide any specific supporting evidence. Townsend denied that he had any such

²¹ The Employer has rarely discharged or disciplined any employee.

²² Dolan testified, however, that a week before the hearing, Townsend procured another taper because Bosco was unavailable.

²³ Dolan gave general testimony that Townsend also may contact individuals whom he knows personally, but did not provide any examples or details of such hiring.

authority and testified that he had to obtain authorization from Risnychok or Nicoletto before having his crew work overtime. Indeed, Risnychok testified that Dolan is principally responsible for deciding whether overtime will be worked and that even Risnychok himself does not have authority to grant overtime unless it is minimal. Risnychok further testified that Townsend's recommendations to work overtime to accelerate the completion of a job were not routinely followed. Townsend has the authority to spend \$500 of the Employer's money on materials without seeking approval.

A finding of supervisory status is warranted only where the individual in question possesses one or more of the indicia set forth in Section 2(11) of the Act. *The Door*, 297 NLRB 601 (1990). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Juniper Industries*, 311 NLRB 109, 110 (1993). The statutory definition specifically indicates that it applies only to individuals who exercise "independent judgment" in the performance of supervisory functions and who act in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571 (1994). The sporadic, routine, clerical or perfunctory exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Alois Box Co.*, 326 NLRB 1177 (1998), *enfd.* 216 F.3d 1059 (10th Cir. 2001); *Azusa Ranch Market*, 321 NLRB 811, 812 (1996). Mere paper titles and/or hypothetical grants of authority are not determinative. *MJ Metal Products, Inc.*, 325 NLRB 240 (1997); *Store Employees Local 347 v. NLRB*, 422 F.2d 685 (D.C. Cir. 1969). Nor do conclusory statements regarding the asserted exercise of supervisory indicia without record evidence to support such assertions establish supervisory status. *Oregon State Employees Assn.*, 242 NLRB 976, *fn.* 12 (1979). Only individuals with 'genuine management prerogatives' should be considered supervisors, as opposed to 'straw bosses, leadmen and other minor supervisory employees.' *Azusa Ranch Market*, *supra*, 321 NLRB at 812. The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the protection of the Act. *Azusa Ranch Market*, *supra*. The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001); *Fleming Companies, Inc.*, 330 NLRB No. 32, *fn.* 1 (1999); *Bennett Industries*, 313 NLRB 1363 (1994). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Evidence of the exercise of secondary indicia of supervisory authority is not sufficient to establish supervisory status in the absence of primary supervisory indicia of supervisory authority. *First Western Building Services*, 309 NLRB 591, 603 (1992).

Townsend spends the overwhelming majority of his time personally performing carpentry work. He has no independent authority to hire employees, but at most contacts unions to refer employees and conforms to a well-established practice of requesting Bosco to perform taping work. The single incident in which he apparently extended the tenure of temporary employees to perform clean-up work is insufficient to establish hiring authority. He does not discharge, discipline or set wages for employees. In this regard, the Employer cited only a single example of a wage increase—to Townsend's son—and the testimony as to this matter was vague. The Employer has not established that Townsend's assignments of work require independent judgment. Rather, it appears that he follows a routine based on established construction methods

and procedures. See *Azusa Ranch Market*, supra, 321 NLRB at 812; *George C. Foss Co.*, 270 NLRB 232, 235 (1984); *enfd.* 752 F.2d 1407 (1985). The record also fails to show that Townsend responsibly directs employees in their work. Townsend is paid a little more and received a larger bonus in 2000 than the other carpenters, but this secondary indicia alone is insufficient to establish that he is a supervisor, in the absence of any statutory indicia. *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878 (1993). Similarly, his role in verifying the entries on time sheets is a minor clerical task not requiring independent judgment and alone is insufficient to establish supervisory status. *John H. Hansen Co.*, 293 NLRB 63, 64 (1989). Whether Townsend is called a foreman or a superintendent and enters some of his work as “supervision” on the time sheets is insufficient to establish supervisory status. *MJ Metal Products, Inc.*, supra. Based on the foregoing, I find that the Employer has not carried its burden of establishing that Townsend is a supervisor.

Dean Rossi is in charge of fabrication and erection of tilt walls.²⁴ In this capacity, he coordinates with the Employer’s engineers and directs a crew of employees. As with Townsend, the evidence establishes that he spends the vast majority of his time working with tools alongside other employees. In general, the Employer constructs tilt walls in the same way at each site, and the employees on the tilt wall crew perform their tasks in the same way at each site. There is no evidence that he has any authority to hire, discharge, discipline or set wages for employees or that he effectively recommends action in those areas. Rossi suggested that the Employer rehire Jolley and Poinsett, two available and satisfactory former employees, to fill job openings for carpenters, but these casual personal recommendations do not constitute the exercise of supervisory authority. Unlike Townsend, no one refers to Rossi as a supervisor, and he does not record his hours on time sheets as “supervision.” Moreover, he is paid the journeyman, rather than foreman, rate of pay. There is no evidence that, aside from isolated emergencies, Rossi has the authority to authorize overtime. In 2000, he received a \$10,000 bonus, and he has a company truck as do several other employees. Based on the foregoing, I find that the evidence fails to establish that Rossi is a supervisor. Accordingly, I shall include Rossi in the unit.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time carpenters,²⁵ excluding all other employees, including non-carpenter construction employees, cement masons, operators, shop mechanics, landscaping employees, office employees and guards and supervisors as defined in the Act.

²⁴ At the hearing, the Employer contended that Rossi was a supervisor, but the Employer did not address this issue in its brief and may abandoned this position.

²⁵ The Employer does not currently employ any carpenters apprentices, and there is no evidence that it ever has done so. Accordingly, I will not include this classification in the unit.

DIRECTION OF ELECTION²⁶

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,²⁷ subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Additionally, eligible are those employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and have been employed for a total of 45 working days within the 24 months immediately preceding the payroll period ending immediately preceding the date of this Decision, and also have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.²⁸ Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

SOUTH JERSEY REGIONAL COUNCIL OF CARPENTERS, LOCAL 1489 and METROPOLITAN REGIONAL²⁹ COUNCIL OF CARPENTERS, AFFILIATED WITH UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional

²⁶ The eligibility date for the election shall be the payroll period ending immediately preceding the date on which the Notice of Election is issued.

²⁷ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

²⁸ *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction*, 133 NLRB 264 (1961), modified in 167 NLRB 1078 (1967).

²⁹ The record shows that the 'Metropolitan Regional Council' is the same organization as what was formerly the 'Metropolitan District Council.' Accordingly, the newer name will appear on the ballot.

Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **January 2, 2002**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **January 9, 2002**.

Signed: December 26, 2001

at Philadelphia, Pennsylvania

/s/

DANIEL E. HALEVY

Acting Regional Director, Region Four

177-8580-1500	440-1760-9100	440-1760-9167-1800
177-8560-1000	440-1760-0500	440-1760-9167-1833
177-8560-1500	440-1760-1500	
177-8560-4000	440-1760-5300	
177-8560-5000	440-1760-3400	
177-8560-9000	440-1760-4300	
177-8560-9500		

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